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in practice no open opposition is permitted in Poland, they nevertheless "legalize" the existence of other political organizations. 665 642

The constitutional legalization of the Communist Party's exclusive control of state power in Rumania is based on the contention that with the complete eradication of the active opposition in the country the Party no longer needs to hide under the paraphernalia of tactical secrecy. The Party's "legal" control of the state apparatus is assured by its exclusive right to nominate candidates in the elections of deputies to the Grand National Assembly (Article 100). This control is further facilitated by the provisions of the new Electoral Law restricting the right of certain groups of people considered inimical to the regime to participate in the national elections. In this respect, the 1936 Constitution of the USSR (Article 135) is more liberal; it removed all discriminatory provisions—religious, economic, and political—formerly applied against non-Bolsheviks. This distinction is based on the supposition that, unlike the USSR, Rumania as well as the other popular republics, advanced as they are, are still in the presocialistic stage of development, which necessitates an incessant waging of the class-struggle against the "enemies of the working class."

Theoretically, the people exercise their power through duly elected organs, 642 the Grand National Assembly and the People's Councils. These, in turn, appoint the necessary administrative and judiciary bodies, the Presidium, the Council of Ministers, the higher echelon of the judiciary, and the Executive Committees of the People's Councils respectively. Though the constitutional theory of exclusive legislative power in the Grand National Assembly is constantly maintained, Soviet and satellite legislative history reveals the preponderance of the Council of Ministers. While the Council is formally appointed by, and theoretically subordinate to, the Grand National Assembly, its members in reality are chosen by the Central Committee of the United Workers' (Communist) Party from among its leading functionaries. The primary function of the Council of Ministers is to effectuate the policies of the Party through the vast bureaucratic apparatus it controls; that of the Grand National Assembly is the ratification of governmental decrees.

Justice in the People's Republic of Rumania, according to the new Constitution, is administered by the Supreme Court, the Regional Courts, the People's Courts, and the Special Courts. Their main function is the defense of the political regime and the protection of communal property and of the rights of citizens (Article 65). Unless otherwise provided for by law, all judicial cases are tried with the participation of people's assessors (Article 66). [642] ●

The supreme supervisory power over the observance of law by all central and local governmental organs of state power and administration as well as by all officials and citizens is vested in the Procurator General of the Rumanian People's Republic (Article 73). He is appointed by the Grand National Assembly for a term of five years, and he in turn, appoints his deputies and the procurators of the local units for a term of four years (Article 74). Whereas the organs of the Procurator's Office are independent of all local governmental 693 642

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693 642 agencies, being subordinate only to the Procurator General, the latter is responsible to the Grand National Assembly, and in the interim between its sessions, to the Presidium (Article 75).

[671] The powers and functions of the Procurator General are specified by Law No. 6 of June 2, 1952, concerning the "Setting up and Organization of the Procuratura of the Rumanian People's Republic." The Procurator General has the right to take part, "with a consultative vote," in the meetings of the Presidium and of the Council of Ministers (Article 4). He is empowered to see to it that the decisions and rules issued by the central and local agencies of state power and administration conform with the laws of the country. Charged with the administration of justice, he supervises the activities of the agencies of penal investigation; he may ask for the dossier at any stage of the investigation, and has the right to "issue compulsory instructions with regard to the development of penal investigation and inquiry and to be present at any act of penal investigation or to carry it out himself" (Article 7, Paragraph a).

642 The Supreme Court, whose chief function is the supervision of the judicial activities of all the courts (Article 72), is elected by the Grand National Assembly for a term of five years (Paragraph 1 of Article 67). The judges, theoretically independent and subject only to the law (Article 70), and the people's assessors are elected in accordance with the provisions of a special law (Paragraph 2 of Article 67). All judicial proceedings are conducted in the Rumanian language, with special provisions for the use of other languages in areas inhabited by compact groups of other nationalities or minorities. Persons not knowing the language in which the judicial proceedings are conducted are constitutionally guaranteed the right to acquaint themselves with the material of the case and the privilege to use their own language in the summation of their case (Article 68).

Unlike the Supreme Court of the United States, the Supreme Tribunal of the People's Republic of Rumania, like its Soviet counterpart, has no power of constitutional interpretation and is more of an auxiliary than an independent branch of government.

177. 69 692 The constitutional provisions regarding the administration of justice, however "progressive" they may sound, conceal the true nature of the Marxist-Leninist concept of justice, which has been adopted by the People's Republic of Rumania as well as by the other countries in the Soviet orbit. The modern principles of penal law (*"nullum crimen sine lege; nulla poena sine lege"*) applied and observed in all civilized countries, have been replaced by the concept of "class-justice." Marxist doctrinaires assert that the purpose of "proletarian class justice" is the maintenance of the regime of the dictatorship of the working class and the complete elimination of all "reactionary" and "anti-democratic" elements.

Although the principle of "class-justice" has not been embodied in the two Rumanian constitutions framed under the regime of popular democracy, it nevertheless has found clear expression in Law No. 5 passed by the Grand

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National Assembly on June 2, 1952, concerning the "Organization of the Judicature." Article 1 of the Law emphatically states that the function of the judiciary is the defense of the socio-economic structure of the state and of the rights and interests of state institutions and organizations. Furthermore, it is emphasized that the aim of the judiciary is the "education" of the citizens "in the spirit of devotion to the fatherland and in the spirit of the construction of socialism" (Article 2).

The people's assessors perform in practice a much greater function in judicial proceedings than those specified by the Constitution. The Minister of Justice is authorized to detail them from one court to the other whenever circumstances require. Thus, there are actually special teams of "people's judges" which the Ministry of Justice can use in accordance with the political interests of the Party.

Article 9 of Law No. 5 of 1952 also authorizes the courts to hear cases outside their seats if this is required "to fulfil the educational purpose of justice." Furthermore, hierarchically superior courts may take away from subordinate courts any case "in order to hear it themselves or have it heard by another court."

The required impartiality of judges is furthermore impaired by limitations imposed by the electoral laws on the right to participate in the election of people's judges. The privilege is restricted to the "democratic" elements only (Article 13, Paragraph 7, of Law No. 5). This is coupled with the provisions confining the nomination of candidates to the United Workers' (Communist) Party or to its affiliated mass organizations (Article 13, Paragraph 1).

In discussing the new role of justice and law, Vasilescu-Alba, a jurist of the Rumanian People's Republic, asserted that "all legal rules, being the expression of the will of the working class, must be understood and interpreted in the light of the class struggle." Justice is thus "an executive organ of the will of the working class." Positive law, when in disagreement with this principle, must make room for the "legal conscience of the proletariat."[3]

The fundamental rights and duties of citizens are enumerated in a special chapter. The primacy of social rights over individual rights is, as in the USSR, both functional and political.[4] Most of the rights and freedoms stipulated by the Constitution are either programmatic, circumscribed by escape clauses, or outright illusory. Thus, for instance, the provision relating to freedom of the press, speech, and assembly, as stated by Article 85, (a word-by-word replica of Article 125 of the Soviet Constitution of 1936), emphatically denies

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[3] "Statul Polițienesc" Cronica Românească, October 1, 1950, p. 25.

[4] Professor Boris Mirkine-Guetzevitch, while recognizing the dictatorial character of all the constitutions in the Soviet sphere, makes nevertheless a distinction between the declarations of rights of the Soviet constitutions and those of the satellite constitutions. According to Professor Mirkine, whereas the declarations of the People's Republics establish the "functional" primacy of social rights over individual rights, those of the Soviet republics establish "political" primacy. See Boris Mirkine-Guetzevitch, Les Constitutions Européennes, 2 vol. Paris, 1951.